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17 June 1954

MEMORANDUM FOR: General Counsel

SUBJECT : Proposed Publication of OGC Opinions

1. You have asked me to look into the matter of the publication of the opinions of this office. Since then I have discussed this with the offices of DD/A []; Security []; Regulations Control Staff []; DD/P-Admin [] Finance [] and Printing and Reproduction. The general reaction has been one of enthusiasm, if tempered, by the offices of Security and DD/P-Admin, by considerations of security. Probably there is more to the problem, both administratively and policy-wise, than meets my particular eye. But in the interest of making a beginning, there is set out following a general run-down of what I consider to be the more important of these aspects. It pretends to be neither definitive nor all-inclusive but rather a base-line from which we can proceed to a more complete and final position on the entire matter.

2. Preliminary Remarks

a. First, there is the question of whether or not the opinions should be published at all. The arguments for publication may be summed up with the statement that publication would facilitate administration at the working level. And the arguments against publication can be pulled together in the conclusion that publication of our opinions would result in their abuse, hence in maladministration. Undoubtedly publication would generate the risk, even the probability, that our thoughts would be lifted out of context and misapplied, or that insufficient weight would be granted to the particular fact situation of this or that opinion, or that headnotes (if they are used) would be referred to rather than the total opinion, or that the opinion just plain would not be understood, etc. This could cause maladministration in an original instance and vitalize the not completely dormant dispensation of our being brought too late into any given picture. However, such risks are the occupational ones of any tribunal, even so modest a one is our's. Already they are abroad and have become actualities in the experience of each of us by virtue of the very limited publication in which presently we engage. And I do not believe that they have given us, or the Agency, any real amount of trouble. The question thus becomes whether or not they would become intolerable if multiplied by the number of extra offices which would receive the opinions if published as suggested later

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in this memorandum. In the long run, I think not; and I emphasize, 'in the long run'. First, the opinions can be so written as to avoid a stated sweeping application. Second, in what I refer to later on in this memorandum as a 'policy paper' which is to be circulated to all prospective recipients of the opinions, we can point out certain "do's" and "don'ts" as regards their interpretation. Third, I believe that the average administrator, or, at least, the greater number of them, can be relied upon both reasonably to interpret office opinions and/or learn so to do. Fourth, gradually and with the passage of time, relying on a modicum of stability of administrative personnel, they can be 'educated' to avoid loose, too broad or out-of-context interpretations. Fifth, if the situation should get out of hand, presumably we can cease general publication and go back to the present system. Against these measures which I consider dilutive of the negative prospects possibly incident to publication of our opinions, I suggest these positive ones. First, if only gradually, an appreciable number of what really are administrative matters will be shifted back to where they belong -- among the administrators. Second, duplicate answers, be they so simple as to involve only the forwarding of a previous opinion on the same subject, will be avoided. Third, the bureaucratic process will be accelerated in many instances to the extent of the amount of time consumed in a particular problem being referred to this office, worked on, and sent back. Fourth, whatever the debilities of the legal mind, certain of its strengths might spread sufficiently to overcome that attitude, so often encountered, of reliance only on the printed word, the specific directive, but, lacking these, on the General Counsel. Fifth, there seems to be a respectable demand for publication from those echelons which are in a good position to judge the principal gain of the proposal, that of making our advice more readily available to those who need it. Recently and specifically these have included the DD/A's office [] RCS ([]) 25X1 Personnel (Meloon) and an anonymous, if fervent, suggestor to the Incentive Awards Committee. While their judgment is not to be accorded conclusive weight, at the same time I do not believe that we should presume too much to judge for them, particularly against a background of only a few instances of misinterpretation/maladministration. I feel we can try it, should try it.

b. Second, there is security. The office of DD/P-Admin and, to a lesser extent, our Office of Security, were of the opinion that the Agency-wide dissemination of our opinions would put operational information in the hands of those who did not "need to know", would thwart the principle of compartmentation. For a variety of reasons, chief among which is that most of the people to whom dissemination is contemplated wouldn't learn anything operational from the opinions that they didn't know anyway, I don't take this objection seriously. However, it has been raised, has a certain irrefutable sanctity, and so must be dealt with. The answer suggested and tentatively agreed upon is that of a sterilization of opinions dealing with fact situations arising in the DD/P complex. This would amount to the deletion of proper names, perhaps names of countries, and the substitution therefore of initials and "Country X", or something along that line. While this would put something of an additional administrative burden on the preparation of the opinions for publication in this office and lend the final product a certain

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unreality, neither consideration poses a serious deterrent. The policy question remains of whether so to treat all opinions, in the interest of uniformity, or just those having to do with DD/P.

c. Third, there is a question of what opinions should be published in point of time. A review of past opinions of this office indicates to me that they are not suitable for publication for the principal reason that a great many of them contain no statements of facts upon which the opinions are predicated. Such opinions, while probably understandable to the original recipients who knew the facts, would not make much sense to persons unacquainted with them. And I think it is too late now, and would be too much trouble, to go back and reconstruct the omitted fact situations for the sake of publication. This would seem true considering that opinion publication is a long range, prospective undertaking; and its value does not depend too much on what has happened during the past few years. I conclude that publication of our opinions should be prospective as of whatever future date, if any, is decided upon.

d. Fourth, and related to the third consideration above, there is the problem of the form of the opinions. I think that some form is necessary, although it need not be so rigid as to elevate procedural considerations over those of substance, to hog-tie writers. Principally I recommend that each opinion contain a statement of facts -- this to the end of apprising the nonrequesting office of circumstances upon which the opinion was predicated. Aside from this principal requirement, I think the form should be along the following lines. The first paragraph should acknowledge receipt of the request for an opinion and generally state the problem presented. The second paragraph should contain statements of the facts and of the applicable law and/or regulations. The third specifically should frame the issue. Thereafter, in as many paragraphs as are necessary, the discussion should be set out. And the final paragraph should state the opinion of the office. I do not believe that this format is so rigid as to be Procrustean. At the same time, it furnishes essential information to the nonrequesting offices and provides a vehicle for the logical development and comprehension of the opinion. One of my own opinions, which more or less follows this form, and also embodies certain other mechanical details of the opinion as it will appear in final form, is appended and marked Tab A.

e. Fifth, there is the problem of what, among the many papers originating in this office and being disseminated to one or more offices in the Agency, should constitute a publishable opinion. The answer to this lies somewhere between a memo having to do with a particular, minute phase of a going operation and an opinion having to do with a problem which has arisen in the past, to which no known facts can be added, and which will be similar to other problems arising in the future. I am not prepared to offer a concise definition. Rather I would suggest that the decision as to what should be published should be a function of the consideration of a person from this office who has had enough experience to be able to judge what is sufficiently significant to warrant publication and what is not. Prior to undertaking the publication of our opinions, such a person, whom I shall call an Opinions Editor, should be designated both for the purpose described above and the further purpose of handling the administration incident to the publication.

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f. Finally, there is the consideration of the necessity for a certain amount of indoctrination of our prospective consumers. To accomplish this, I suggest that, prior to the actual publication of any opinions, we put out a short policy paper to them. This would contain certain "do's" and "don'ts" as regards the use of the opinions. Thus, a caveat against pulling phrases out of context should be stated. The converse "do" of reading the whole opinion against its facts also should be declared. If it is decided to use headnotes, the danger of too much reliance on a headnote should be set out. The suggested schedule of publication should be furnished. The explanation of the sterilization of certain of the opinions should be made. And so forth.

3. Original Writing

Opinions should be continued to be written as in the past with the exception of the use of the general form described above. Thus, the opinion of the office in its original form and signed by the writer should be sent to the requesting office. The green chrono copy should be sent direct to the office Opinions Editor. He should do two things. First, if the subject matter of the opinion has to do with one of the DD/P offices, he should sterilize it to the effect of substituting initials for proper names, generic names, such as "Country A", for specific places. This should be submitted to the DD/P-Admin for approval. Second, he should put the opinion in the proper format for publication. This format, generally consisting of deleting certain procedural aspects of the opinion, such as the To, From, Subject headings; the name of the signer; the addition of a headnote (if thought desirable) and the title are apparent from Tab A. All of these mechanics embody my own ideas on the subject; and they are open to further suggestion.

4. Publication

Having sterilized the opinion and put it in the proper format, the Opinions Editor should release the chrono copy and should retain the opinion to be published until such time as he can send a group of the opinions on. I suggest that on the second Friday of every month he send all of the opinions for the preceeding month forward to the Regulations Control Staff, Attention: Mr. Wiltse. Mr. Wiltse has expressed an interest in the project and, by virtue of his position, is in a better position to accomplish both the printing of the opinions and their dissemination. This is not to mention the incidental benefit to this office of being relieved of the administration, including the cost, consequent upon printing and publication. Mr. Wiltse will then have each opinion typed on 'Duplimat' sheets, or will arrange for their typing on these sheets by the printers, and will send the sheets to the reproduction plant or [redacted] They will be accompanied by distribution lists.

5. Distribution

This will be accomplished from the [redacted] It is my thought that at least one copy, perhaps two in some cases, should go to each of the major components of the Agency, and be kept on file in the

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chief administrative office of that component. By major component I mean the following:

DCI	1	AD/O	1
DDCI	1	AD/CO	1
DD/P-Admin	1	DTR	1
C/PP	1	Comptroller	1
C/FI	1	Chief, Fiscal Division	1
Each Area Division (DD/P)	1	Chief, Finance Division	1
DD/I	1	AD/Personnel	1
DD/A	1	Auditor	1
Inspector General	1	C/LO	1
AD/NE	1	C/MS	1
AD/SI	1	D/SI	1
AOD	1	AD/CI	1
AD/IC	1	OGC	1
AD/CD	1	DD/A (RCS)	5

In final form the opinions might look as does Tab A. They will be punched for loose-leaf filing but the particular method of their storage and filing will be up to the office concerned. While we could suggest a method of filing, there are these considerations. First, whether or not the suggestion would be followed. I doubt that in every case that it would because different administrators have different methods of keeping their houses. Second, it would entail no small amount of work by this office to so mark the opinions and so indoctrinate the ultimate recipients as to assure that the suggested method would be followed. But again, there may be better ideas contra.

6. In closing, whatever action this office takes in relation to the above, that project will have to be co-ordinated further with Security and DD/P and DD/A and, probably de novo with other offices, perhaps the Director's, which will desire to be heard on the matter.

7. Your comments would be appreciated.



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Attachment
Tab A

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